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MAR 08 2004

OFFICE OF PETITIONS

In re Application of :  
Mary Balogh :  
Application No. 10/608,254 : DECISION REFUSING STATUS  
Filed: 27 June, 2003 : UNDER 37 CFR 1.47(b)  
Attorney Docket No. 2002P18305US01 :

This is in response to the petition filed on 26 January, 2004,  
under 37 CFR 1.47(b).

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of  
this decision to reply, correcting the below-noted deficiencies.  
Any reply should be entitled "Request for Reconsideration of  
Petition Under 37 CFR 1.47(b)," and should only address the  
deficiencies noted below, except that the reply may include an  
oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

Extensions of time may be obtained in accordance with 37 CFR  
1.136(a).

The above-identified application was filed on 27 June, 2003,  
without an executed oath or declaration. Accordingly, on 23  
September, 2003, Initial Patent Examination Division mailed a  
Notice to File Missing Parts of Nonprovisional Application,  
requiring an executed oath or declaration and a surcharge for its  
late filing.

In response, on 26 January, 2004 (certificate of mailing date 19  
January, 2004), petitioners filed the present petition.  
Additionally, on 26 January, 2004 (certificate of mailing date 22  
January, 2004), petitioners filed the late-filing surcharge and a  
two (2) month extension of time.

Petitioner asserts that the inventor has been sent a copy of the  
application, but has refused in writing to sign the declaration.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks items (2) and (6).

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. A declaration in compliance with 37 CFR 1.63, 1.64, and 1.67 must be presented, signed by all of the signing inventors, if any. If no inventor(s) will sign the declaration, the declaration may be signed on behalf of the inventor by an assignee. The oath or declaration must be signed by an officer of the corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor(s). The officer must identify his/her title in the declaration, as well as his/her mailing address, residence, if the applicant lives at a different location from where he or she customarily receives mail, as well as the citizenship of individual signing on behalf of the non-signing inventor. If the oath or declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.<sup>1</sup>

As to item (6), petitioners must provide a statement that the filing is necessary to prevent irreparable damage or to preserve the rights of the parties.<sup>2</sup>

The petition fee of \$130.00 has been charged to counsel's deposit account, 19-2179, as authorized in the present petition.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>1</sup>MPEP 409.03(b).

<sup>2</sup>MPEP 409.03(g).

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
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By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

By hand:          U.S. Patent and Trademark Office  
                  2011 South Clark Place  
                  Customer Window  
                  Crystal Plaza 2, Lobby, Room 1B03  
                  Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions